

**FORM OF  
LIMITED LIABILITY COMPANY  
OPERATING AGREEMENT  
FOR  
TRANSCONNECT LLC**

**Dated as of [     ]**

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**FORM  
OF  
LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
FOR  
TRANSCONNECT LLC**

This Limited Liability Company Agreement (this "Agreement") of TRANSCONNECT LLC (the "Company") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2001 by and among TRANSCONNECT CORPORATE MANAGER, INC., a Delaware corporation (the "Corporate Manager"), the Utility Members listed on Schedule B attached hereto, and each Person (as defined herein) who may be admitted from time to time as a member of the Company (individually, a "Member" and collectively, the "Members").

**RECITALS**

WHEREAS, the Members desire to form the Company in accordance with the provisions of the Delaware Limited Liability Company Act, as in effect on the date hereof, and as it may be amended from time to time (the "Act"), and desire to enter into a written agreement pursuant to the Act governing the affairs of the Company and the conduct of its business.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the Members agree as follows:

**ARTICLE 1**  
**Definitions**

"Act" means the Delaware Limited Liability Company Act, as in effect on the date hereof, and as it may be amended from time to time.

"Additional Capital Contributions" means any additional capital contributions made pursuant to Section 3.3 of this Agreement.

"Affiliate" means an affiliate, as defined by the FERC in Order No. 2000.

"Approval Terms" means the provisions of Sections 6.2, 8.5, 9.6, 10.6, 11.2, and 11.3 and Article 13 of this Agreement, including the applicable defined terms used in such provisions.

"Book Tax Value", with respect to any asset of the Company, means:

- (i) the initial Book Tax Value of any asset contributed by a Member to the Company on the date hereof as an Initial Capital Contribution shall equal the Net Book Value of such asset; and, the initial Book Tax Value of any asset contributed by a Member to the Company on or after the date hereof as an Initial Capital Contribution shall equal the fair market value of such asset, as agreed to by such Member and the Managing Member (which fair market value may be either greater or less than Net Book Value);
- (ii) the initial Book Tax Value of any asset acquired (other than by means of a Capital Contribution by a Member) or created by the Company shall equal the adjusted tax basis of such asset for U.S. Federal income tax purposes;
- (iii) the Book Tax Values of all Company assets (including intangible assets such as goodwill) shall be adjusted by the Tax Matters Partner to equal their respective fair market values as of the following times (each a "Revaluation Event"):
  - (a) the acquisition of an additional Interest in the Company by any new or existing Members in exchange for a Capital Contribution;
  - (b) the distribution by the Company to a Member of money or Company property as consideration for an Interest in the Company; and
  - (c) the liquidation of the Company within the meaning of Regulations section 1.704-1(b)(2)(iv)(f)(~~5~~)(ii);

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provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Tax Matters Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

- (iv) the Book Tax Values of all Company assets (including intangible assets such as goodwill) shall be adjusted to reflect any adjustments to the adjusted basis of such assets pursuant to Code sections 734(b) or

743(b), but only to the extent that such adjustments are required to be taken into account in determining Capital Accounts pursuant to Regulations section 1.704-1(b)(2)(iv)(m); provided, however, that Book Tax Values shall not be adjusted pursuant to this subsection (iv) to the extent that the Tax Matters Partner determines that an adjustment pursuant to subsection (iii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (iv); and

- (v) if the Book Tax Value of an asset has been determined or adjusted pursuant to subsection (i), (ii), (iii) or (iv) above, such Book Tax Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses and other items allocated pursuant to Article 5 hereof.

The foregoing definition of Book Tax Value is intended to comply with the provisions of Regulations section 1.704-1(b)(2)(iv) and shall be interpreted and applied consistently therewith.

"Business Day" means any day (other than a day which is a Saturday, Sunday or federal holiday in the United States).

"Capital Account" means, for each Member, the capital account maintained by the Company for such Member as described in Section 4.1.

"Capital Contribution" means the amount of money and the initial Book Tax Value of other property voluntarily contributed by a Member to the Company, including Initial Capital Contributions and Additional Capital Contributions.

"Code" means the Internal Revenue Code of 1986, as amended from time to time or any successor statute. A reference to the Code shall be deemed to include any mandatory or successor provisions thereto.

"Depreciation" means, for each Fiscal Year or part thereof, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for U.S. Federal income tax purposes with respect to an asset for such Fiscal Year or part thereof, except that if the Book Tax Value of an asset differs from its adjusted basis for U.S. Federal income tax purposes at the beginning of such Fiscal Year, the depreciation, amortization, or other cost recovery deduction for such Fiscal Year or part thereof shall be an amount which bears the same ratio to such Book Tax Value as

the U.S. Federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year or part thereof bears to such adjusted tax basis. If such asset has a zero adjusted tax basis, the depreciation, amortization, or other cost recovery deduction for each taxable year shall be determined under a method reasonably selected by the Tax Matters Partner.

"Economic Terms" means the provisions of Sections 2.7, 2.10, 2.11 and 2.12, Article 3, Article 4, Article 5, Article 6, Sections 7.1(b), 7.2(d) and 7.3, Article 10, Article 11, Article 12 and Sections 14.7, 14.10 and 14.11, including the applicable defined terms used in such provisions.

"FERC" means the Federal Energy Regulatory Commission, or any successor entity thereto.

"Fiscal Year" means the fiscal year of the Company as defined in Section 2.9 hereof.

"Formation Date" means the date on which the term of the Company shall commence as defined in Section 2.5 hereof.

"GAAP" means United States generally accepted accounting principles, as in effect from time to time.

"Initial Capital Contribution" means any initial capital contribution made pursuant to Section 3.2 of this Agreement.

"Interest" means, with respect to any Member at any time, such Member's entire beneficial ownership interest in the Company at such time, including such Member's Capital Account, LLC Interests, voting rights, and right to share in profits and losses, all items of income, gain, loss, deduction and credit, distributions and all other benefits and liabilities of the Company, together with such Member's obligations to comply with all of the terms of this Agreement.

"Liquidator" has the meaning set forth in Section 11.3 hereof.

"LLC Interests" has the meaning set forth in Section 3.1 hereof.

"Majority of the Members" means Members holding Percentage Interests representing more than seventy percent (70%) of the outstanding Interests in the Company.

"Managing Member" means the Corporate Manager.

"Market Participant" means a Market Participant as defined in Order No. 2000.

"Member and Stockholder Agreement" means that certain Member and Stockholder Agreement dated as of \_\_\_\_\_, by and between the Members of the Company, the holders of Class B Common Stock of the Corporate Manager, and the Corporate Manager.

"Net Book Value" of an asset contributed (or proposed to be contributed) by a Member (or a prospective Member) to the Company as an Initial Capital Contribution or for cash means (i) for those Members (or prospective Members) who maintain their financial books and records in accordance with the FERC's Uniform System of Accounts, the net book value of such asset as determined pursuant to the FERC's Uniform System of Accounts, and (ii) for those Members (or prospective Members) who do not maintain their financial books and records in accordance with the FERC's Uniform System of Accounts, the best reasonable estimate of the original cost of such asset, net of depreciation, as determined in accordance with the FERC's Uniform System of Accounts.

"Non-Voting Interests" has the meaning set forth in Section 3.1 hereof.

"Order No. 2000" means Order No. 2000 and all supplements and amendments thereto issued by the FERC.

"Percentage Interest" means with respect to any Member, as of any date, the ratio (expressed as a percentage) of such Member's Capital Account on such date to the aggregate Capital Accounts of all Members on such date, such Capital Accounts to be determined after giving effect to all contributions, distributions and allocations for all periods ending on or prior to such date, which ratio shall be set forth on Schedule A attached hereto following any such determination.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, governmental entity or any department or agency thereof.

"Profits" or "Losses" means, for each Fiscal Year or part thereof, the taxable income or loss of the Company for such Fiscal Year or part thereof determined in accordance with Code section 703(a) (for this purpose, all items of income, gain,

loss or deduction required to be stated separately pursuant to Code section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (i) any income of the Company that is exempt from federal income tax shall be added to such taxable income or loss;
- (ii) any expenditures of the Company described in Code section 705(a)(2)(B) of the Code or treated as such pursuant to Regulations section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss;
- (iii) any depreciation, amortization and other cost recovery deductions allowable for federal income tax purposes for such fiscal year shall be computed using Depreciation with reference to the Book Tax Value of the assets as reported for Capital Account purposes as opposed to the adjusted tax bases of such assets, in computing such taxable income or loss;
- (iv) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Book Tax Value of the property disposed of, rather than the adjusted tax basis of such property;
- (v) in the event the Book Tax Value of any Company asset is adjusted pursuant to subsection (iii) or (iv) of the definition of Book Tax Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses; and
- (vi) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts pursuant Regulations section 1.704-1(b)(2)(iv)(m)(4) as a result of a distribution other than in liquidation of a Member's Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses.

"Regulations" means the regulations promulgated under the Code by the Department of the Treasury, as such regulations may be amended from time to time.

"RTO" means a RTO as defined by Order No. 2000.

"RTO West" means a Washington nonprofit corporation formed to function as a RTO as defined by Order No. 2000.

"Standards of Conduct" means the Standards of Conduct applicable to the Corporate Manager and the Company, as approved by the FERC and in effect from time to time.

"Substitute Member" means a Person who has become a substitute Member pursuant to Section 10.4 hereof.

"Transfer" means any sale, assignment, gift, hypothecation, pledge, encumbrance, alienation, mortgage or other disposition, whether voluntary or by operation of law (other than a transfer which may arise by reason of death or incapacity), of an Interest or any portion thereof; provided, however, that for purposes of this Agreement, a Transfer shall not include the conversion of an Interest or any portion thereof pursuant to Section 3.4 hereof.

"Transferee" means a purchaser, transferee, assignee (other than assignees for purposes of collateralizing a Member's loan) or any other Person who takes, in accordance with the terms of this Agreement, an Interest in the Company.

"Utility Member" means each of the entities listed on Schedule B attached hereto.

"Voting Interests" has the meaning set forth in Section 3.1 hereof.

## **ARTICLE 2**

### **The Limited Liability Company**

2.1 *Formation.* The Members have formed the Company as a limited liability company pursuant to the provisions of the Act and in accordance with the further terms and provisions hereof. On \_\_\_\_\_, 2001, the Certificate of Formation of the Company was filed with the Secretary of State of the State of Delaware in

conformity with the Act. Each of the Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents, and shall do or cause to be done all such filing, recording, publishing and other acts, in each case, as may be necessary or appropriate from time to time to comply with all applicable requirements for the formation and/or operation and, when appropriate, termination of a limited liability company in the State of Delaware and all other jurisdictions where the Company shall desire to conduct its business.

2.2 *Name.* The name of the Company shall be "TransConnect LLC" and its business shall be carried on in this name with such variations and changes as are necessary to comply with the requirements of the jurisdictions in which the Company's operations are conducted.

2.3 *Business Purpose.* The purpose of the Company is to hold and operate certain transmission assets as a participant in the RTO West and, subject to the approval of the Members as may be required under this Agreement, to engage in or transact any other lawful act or activity or business for which a limited liability company may be formed under the Act; provided, however, that in no event shall the Company engage in or transact any activity or business that would result in the Company not being in compliance with Order No. 2000 and all applicable requirements of such rules and orders as the FERC may now or hereafter issue which are applicable to the Company; and provided further, that the Company shall not be a Market Participant and shall at no time hold, directly or indirectly, any interest in a Market Participant in the RTO West or in any other RTO in which any Member, or any Affiliate of any Member, is a Market Participant. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, insofar as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company as described in the immediately preceding sentence.

2.4 *Registered Office and Agent.* The registered office of the Company in the State of Delaware and its registered agent for service of process on the Company in the State of Delaware shall be as set forth in the Certificate of Formation of the Company, as filed with the Secretary of State of the State of Delaware, as the same may be amended from time to time.

2.5 *Term.* The term of the Company shall commence on the date and time of the filing of the Certificate of Formation of the Company with the office of

the Secretary of State of the State of Delaware (the "Formation Date") and shall continue until dissolved and liquidated in accordance with Article 11 hereof.

2.6 Principal Office and Places of Business. The mailing address and the street address of the principal office of the Company shall be located in the State of [\_\_\_\_], as determined by the Managing Member. The Company may from time to time have such other place or places of business within or without the State of Delaware as the Managing Member may deem advisable.

2.7 Title to Company Property. No real or other property of the Company shall be deemed to be owned by any Member individually. Legal title to all property of the Company shall be held and conveyed in the name of, and vested solely in, the Company. Each Member's Interest in the Company shall constitute personal property.

2.8 The Members. The name, address and facsimile number and Percentage Interest of each Member is set forth on Schedule A attached hereto, which Schedule A shall be updated, from time to time, as provided under this Agreement.

2.9 Fiscal Year. Unless the Tax Matters Partner shall at any time otherwise determine in accordance with Code section 706, the fiscal year of the Company shall be the Corporate Manager's taxable year, which ends on [December 31], and the initial Fiscal Year of the Company shall commence on the Formation Date and end on [December 31, 200\_].

2.10 No State Law Partnership. The Members agree to form a limited liability company and intend that the Company not be a partnership (including a limited partnership) or joint venture under the laws of the State of Delaware or any other laws and that no Member be a partner or joint venture of any other Member for any purpose; provided, however, that to the extent permitted by applicable law, the Company shall be treated as a partnership for federal, state and local income tax purposes. This Agreement shall not be construed in any manner that is inconsistent with the foregoing.

2.11 No Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company. No Member shall have any liability for the debts, obligations or liabilities of the Company solely by reason of being a Member, and no Member shall have any liability for the debts, obligations or liabilities of any other Member.

2.12 *Acquisition of Transmission Facilities.* In order for the Company to acquire ownership of or operational control over transmission facilities covering the widest possible area, the Managing Member, on behalf of the Company, shall have the authority to acquire ownership of or otherwise obtain operational control over transmission facilities owned by others either through an agreement of sale, a lease, an operating agreement or any other device allowing the transfer of ownership or operational control of transmission facilities to the Company. The Managing Member, on behalf of the Company, may acquire or otherwise obtain ownership or control over additional transmission facilities in the foregoing manner without the approval of the Members (but subject to the Managing Member's fiduciary duty to the Members as set forth in Section 9.1(b) hereof); provided, however, that no Person shall be admitted as a Member of the Company, nor shall any Interests in the Company be issued, in connection with any of the foregoing, except in strict compliance with the provisions of Article 3 of this Agreement. Notwithstanding anything contained herein to the contrary, the provisions of this Section 2.12 shall be subject, at all times, to the provisions of Section 8.5 of this Agreement.

2.13 *Representations and Warranties of the Members.* Each Member represents and warrants that:

- (a) It is duly organized, validly existing and in good standing under the laws of the state of its organization;
- (b) It has all requisite power and authority to enter into this Agreement; the execution and delivery by such Member of this Agreement and the consummation by such Member of the transactions contemplated hereby have been duly authorized by all necessary and appropriate action on the part of such Member; and this Agreement has been duly and validly executed and delivered by such Member and constitutes (assuming the due and valid execution and delivery of this Agreement by the other Members), the legal, valid and binding obligations of each Member, enforceable against each Member in accordance with its terms;
- (c) There is no litigation pending or, to the best knowledge of such Member, threatened against such Member which has a reasonable likelihood of materially and adversely affecting the operations, properties or business of the Company or any of such Member's obligations under this Agreement;
- (d) The execution, delivery and performance by such Member of this Agreement will not result in a breach of any of the terms, provisions

or conditions of any agreement to which such Member is a party which has a reasonable likelihood of materially and adversely affecting the operations, properties or business of the Company or such Member's obligations under this Agreement;

(e) The execution and delivery by such Member of this Agreement and the formation of the Company as a limited liability company does not require any filing by it with, or approval or consent of, any governmental authority which has not already been made or obtained, except the filing of the Certificate of Formation in the office of the Secretary of State of the State of Delaware; and

(f) There are no claims, either administrative or judicial, at law or in equity, pending or, to the knowledge of such Member, threatened against it which could, if continued, have a material adverse affect on the business, operations, properties, assets or condition (financial or otherwise) of such Member, or the ability of such Member to perform its obligations under this Agreement.

### **ARTICLE 3**

#### **Capital Structure and Contributions**

##### **3.1 Capital Structure.**

(a) The capital structure of the Company shall consist of two (2) classes of interests: Voting Interests ("Voting Interests") and non-voting common interests (the "Non-Voting Interests" and, together with the Voting Interests, the "LLC Interests"). Except as otherwise set forth herein, each LLC Interest shall be identical to each other LLC Interest in every respect and shall entitle the holder thereof to the same rights and privileges and shall be subject to the same qualifications, limitations and restrictions.

(b) Upon compliance with the provisions of Section 3.1(d) below, any Member that is not a Market Participant shall be entitled to convert, at any time and from time to time, any or all of the Non-Voting Interests held by such Member into the same number of Voting Interests; provided, however, that no holder of any Non-Voting Interests shall be entitled to convert any such Non-Voting Interests, to the extent that, as a result of such conversion, such holder and its Affiliates, directly or indirectly, would own, control or have the power to vote a greater number of Voting Interests or other securities of any kind issued by the Company than such holder and its Affiliates shall be permitted to own, control or have

the power to vote under any law, regulation, rule or other requirement of any governmental authority at the time applicable to such holder or its Affiliates.

(c) Upon compliance with the provisions of Section 3.1(d) below, any Member shall be entitled to convert, at any time and from time to time, any and all Voting Interests held by such Member into the same number of Non-Voting Interests.

(d) (i) Each conversion of LLC Interests (the "Converting Interests") into the other class of the LLC Interests shall be effected by delivering written notice (the "Conversion Notice") by the holder of such Converting Interests, stating that the holder desires to convert a specified number of such Converting Interests, into an equal number of LLC Interests of the class into which such Converting Interests may be converted (the "Converted Interests"). The Company shall promptly notify each Member of record of its receipt of the Conversion Notice. Except as otherwise provided in Section 3.1(d)(ii), upon receipt of the Conversion Notice, the Company shall be obligated to, and shall, issue in accordance with such instructions the Converted Interests issuable upon such conversion, and shall deliver an amended Schedule A reflecting such conversion to all Members; provided, however, that if such conversion is subject to Section 3.1(d)(iii) below, the Company shall not issue said Converted Interests until the expiration of the Deferral Period referred to therein. Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the close of business on the date on which the Conversion Notice shall have been delivered to the Company, and at such time the rights of the holder of such Converting Interests as such holder shall cease (except that in the case of a conversion subject to Section 3.1(d)(iii) below, the conversion shall be deemed effective upon expiration of the Deferral Period referred to therein).

(ii) Notwithstanding any provision of Section 3.1(d)(i) to the contrary, the Company shall not be required to record the conversion of, and no holder of LLC Interests shall be entitled to convert, Non-Voting Interests into Voting Interests unless such conversion has been approved by all regulatory agencies having jurisdiction over such conversion and is otherwise permitted under applicable law; provided, however, that the Company shall be entitled to rely without independent verification upon the representation of any holder that the conversion of Interests by such holder is permitted under applicable law, and in no event shall the Company be liable to any such holder or any third party arising from any such conversion whether or not permitted by applicable law.

(iii) The Company shall use its commercially reasonable efforts not to convert or directly or indirectly redeem, purchase or otherwise acquire any Non-Voting Interests or take any other action affecting the voting rights thereof, if such action will increase the percentage of outstanding voting securities owned or controlled by any Member to such an extent as is prohibited by any applicable law, rule or regulation, unless the Company gives written notice (the "First Notice") of such action to each Member. The Company will defer making any such conversion, redemption, purchase or other acquisition or taking any such other action for a period of 30 days (the "Deferral Period") after giving the First Notice in order to allow each Member to determine whether it wishes to convert or take any other action with respect to the LLC Interests it owns, controls or has the power to vote, and if any such Member then elects to convert any LLC Interests, it shall notify the Company in writing within 20 days of the issuance of the First Notice, in which case the Company (i) shall promptly notify from time to time each other Member holding LLC Interests of each proposed conversion and the proposed transactions, and (ii) shall effect the conversion requested by all Members in response to the notices issued pursuant to this Section 3.1(d)(iii) at the end of the Deferral Period or as soon thereafter as is reasonably practicable, provided that in the event Members request conversion of more Non-Voting Interests than is permissible by any applicable law, rule or regulation, the conversion will be effected pro rata in accordance with each Member's then Percentage Interest. Notwithstanding the foregoing, the Company shall not, directly or indirectly, redeem, purchase, acquire, convert or take any other action affecting outstanding LLC Interests if such action will increase above 5% the percentage of Voting Interests of the Company owned, held or controlled by any one Market Participant and its Affiliates, or increase above 15% the percentage of outstanding Voting Interests, owned, held or controlled by all Market Participants and their Affiliates.

(e) If the Company shall in any manner subdivide or combine either of the outstanding classes of LLC Interests, then the other outstanding class of LLC Interests shall be proportionately subdivided or combined, as the case may be, and effective provision shall be made for the protection of all conversion rights hereunder. In case of any reorganization, reclassification or change of Voting Interests or Non-Voting Interests, or in case of any merger, combination or consolidation of the Company with one or more other entities (other than a merger, combination or consolidation in which the Company is the continuing Company and which does not result in any reclassification or change of outstanding Voting Interests or Non-Voting Interests), each holder of Interests, irrespective of class, shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such LLC Interests would exist had such event not occurred, to convert such LLC Interests into the kind

and amount of interests and other securities and property (including cash) receivable upon such reorganization, reclassification, change, merger, combination or consolidation, by a holder of the number of LLC Interests of the class of LLC Interests into which such LLC Interests might have been converted immediately prior to such reorganization, reclassification, change, merger, combination or consolidation. In the event of such a reorganization, reclassification, change, consolidation or merger, effective provision shall be made in the organizational documents of the resulting or surviving entity or otherwise for the protection of the conversion rights of the LLC Interests of each class that shall be applicable, as nearly as reasonably may be, to any such other interests and other securities and property deliverable upon conversion of LLC Interests into which such LLC Interests might have been converted immediately prior to such event.

### 3.2 Initial Capital Contributions.

(a) Each Utility Member is herewith contributing, as an initial capital contribution to the Company (an "Initial Capital Contribution"), all of its right, title and interest (whether now held or hereafter acquired) in and to the assets listed and described, together with a statement of the agreed upon Book Tax Value of such assets, following such Member's name on Schedule B attached hereto. In exchange for its Initial Capital Contribution, each Utility Member is herewith receiving an Interest in the Company in proportion to such Utility Member's Percentage Interest, which shall be set forth on Schedule A attached hereto.

(b) Other Persons may be admitted as Members of the Company, provided that (i) any such Person becomes a party to this Agreement by executing, delivering, adopting and acknowledging this Agreement, and (ii) such Person makes an Initial Capital Contribution, the agreed upon Book Tax Value of which shall be approved by the Managing Member at the time such Person is admitted and in no event shall be greater than the Net Book Value of the assets contributed, upon receipt of which the Company shall update Schedule B attached hereto accordingly. Upon satisfaction of the foregoing, such Person shall become a Member and shall receive an Interest in the Company in proportion to such Member's Percentage Interest, which shall be set forth on Schedule A attached hereto. As a result of the admission of any such additional Member, the Percentage Interests of each other Member shall be adjusted accordingly and the Company shall update Schedule A attached hereto accordingly.

(c) The Members shall be entitled to make Additional Capital Contributions as provided in Section 3.3 hereof.

3.3 Additional Capital Contributions. Members shall not be obligated to make any additional capital contribution to the Company (an "Additional Capital Contribution"). A Member may, with the approval of the Managing Member, make Additional Capital Contributions, provided that the Percentage Interests of each Member shall be adjusted accordingly and the Company shall update Schedule A attached hereto accordingly.

3.4 Optional Conversion of Member Interests. Each Member, at its option, may convert all or any portion of its Interest in the Company into (i) shares of non-voting Class B Common Stock of the Corporate Manager or (ii) in the event the Member is not a Market Participant, into shares of voting Class C Common Stock of the Corporate Manager, in each case by transferring to the Corporate Manager such portion of its Interest to be so converted pursuant to the terms of the Member and Stockholder Agreement, provided that, as a result of any such conversion, the Percentage Interests of each Member shall be adjusted accordingly, with the Corporate Manager succeeding to such converted Interest, and the Company shall update Schedule A attached hereto accordingly.

#### **ARTICLE 4**

##### **Capital Accounts**

4.1 Capital Accounts. Each Member shall have a capital account (a "Capital Account") which account shall be credited with (i) the Capital Contributions (net of liabilities that the Company is considered to assume or take subject to under Code section 752) contributed by such Member to the Company; and (ii) allocations of Profits to it pursuant to Section 5.1. Each Member's Capital Account shall be debited with (i) the amount of cash and the Book Tax Value of other property distributed to such Member (net of liabilities that such Member is considered to assume or take subject to under Section 752 of the Code) and (ii) allocations of Losses to it pursuant to Section 5.1. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations section 1.704-1(b), and shall be interpreted and applied in a manner consistent therewith.

4.2 No Other Capital Contributions. Except as provided in Section 3.3, no Member shall be permitted or obligated to make any Additional Capital Contributions to the Company's capital.

4.3 No Interest on Capital Contributions. No Member shall be entitled to demand or receive interest on its Capital Contributions.

4.4 No Right of Withdrawal. No Member shall have the right to withdraw any portion of such Member's Capital Contributions to, or to receive any distributions from, the Company, except as provided in Articles 6 and 11 hereof.

4.5 Loans. The Company may borrow funds from third parties or enter into other similar credit, guarantee, financing or refinancing arrangements with third parties for any prudent business purpose and at reasonable rates.

4.6 Transfers. In the event that all or a portion of an Interest in the Company is Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest, and all allocations of Profits or Losses pursuant to Article 5 with respect to such transferred Interest shall be allocated, as between the transferor and the Transferee, by taking into account their varying interests in accordance with Code section 706.

## **ARTICLE 5**

### **Allocation of Profit and Loss**

#### **5.1 Allocation of Profit and Loss.**

(a) Allocations to Capital Accounts. After giving effect to the special allocations provided in Section 5.1(b) and (c), Profits and Losses shall be allocated among the Members in proportion to their Percentage Interests.

(b) Special Allocations. Any allocation pursuant to Section 5.1(a) will be subject to any adjustment required to comply with Regulations section 1.704-1(b), including, without limitation, any qualified income offset within the meaning of Regulations section 1.704-1(b)(2)(ii)(d) and any nonrecourse deduction (including partner nonrecourse deduction) or minimum gain chargeback (including partner minimum gain chargeback) within the meaning of Regulations section 1.704-2. Any special allocations of items pursuant to this Section 5.1(b) shall be taken into account, to the extent permitted by the Regulations, in computing subsequent allocations of Profits and Losses pursuant to Section 5.1(a) so that the net amount of any items so allocated and all other items allocated to each Member shall, to the extent possible, be equal to the amount that would have been allocated to each Member pursuant to Section 5.1(a) had such special allocations under this Section 5.1(b) not occurred.

(c) Redeterminations. If for any taxable period of the Company, the Company is deemed to have a net increase (or decrease) in taxable income as a result of a redetermination by a tax authority resulting from transactions between the Company and any Member or any Affiliate of any Member, the item or items of Profits or Losses that resulted in such increase (or decrease) in taxable income shall be allocated to the Member that was (or the Affiliate of which was) a party to the transaction and the Capital Accounts of the Members shall reflect such allocations.

5.2 Tax Allocations. (a) If, as a result of contributions of property by a Member to the Company or as an adjustment to the Book Tax Value of Company assets pursuant to this Agreement, there is a disparity between the Book Tax Value of any Company asset and the Company's adjusted tax basis in such asset, any items of income, gain, loss and deduction with respect to such property shall be allocated among the Members so as to take account of such variation between the Book Tax Value and the adjusted tax basis of such asset, consistent with Code section 704(c) and the Regulations thereunder using such method as is permitted under the Regulations that is reasonably selected by the Tax Matters Partner, taking into account any recommendations made by the Members.

(b) Any elections or other decisions relating to the maintenance of Capital Accounts or the allocation provisions of this Article 5 shall be made by the Tax Matters Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.2 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

## **ARTICLE 6**

### **Distributions**

6.1 Cash Distributions. Subject to applicable law and any limitations contained elsewhere in this Agreement, and after setting aside such funds as are required to meet the Company's minimum requirements for cash for operations and any reasonable reserves for working capital, the Managing Member shall distribute cash to the Members within ten days after the end of each fiscal quarter, pro rata in accordance with the Members' respective Percentage Interests, in an amount that is no less than the sum of: (i) the product of (A) the Tax Percentage and (B) the Tax Matters Partner's reasonable estimate of the amount of the Company's taxable

income for such Fiscal Year (determined in accordance with Code section 703(a) as reflected on the IRS Form 1065 Schedule K-1 issued to each Member) attributable to such fiscal quarter and (ii) 50%<sup>1</sup> of the Remaining Available Cash. For purposes of this Section 6.1, the term “Tax Percentage” shall mean forty percent (40%) and the term “Remaining Available Cash” shall mean all cash, revenues and funds received by the Company from its operations, less the sum of (i) the amount determined pursuant to clause (i) of the preceding sentence and (ii) all expenditures for operations, maintenance, administrative (including property tax), depreciation, interest and other overhead expenses incurred in the normal operation of the Company’s business.

6.2 *Distributions in Kind.* No distributions of property other than cash shall be made without the consent of all of the Members.

6.3 *No Right to Distributions.* No Member shall have the right to demand or receive distributions of any amount, except as expressly provided in this Article 6.

6.4 *Withholding.* If the Company is required to withhold with respect to any payments, distributions or allocations to a Member by applicable federal, state, local or foreign tax laws, the Company may withhold such amounts and make such payments to taxing authorities as are necessary to ensure compliance with such tax laws. Any funds withheld by reason of this Section 6.4 shall nonetheless be deemed distributed or allocated (as the case may be) to the Member in question for all purposes under this Agreement. If the Company did not withhold from actual distributions or allocations any amounts it was required to withhold, the Company may, at its option, (i) require the Member to which the withholding was credited to reimburse the Company for such withholding; or (ii) reduce any subsequent distributions to such Member by the amount of such withholding. The obligation of a Member to reimburse the Company for taxes that were required to be withheld shall continue after such Member Transfers its Interest in the Company or after a withdrawal by such Member. Each Member agrees to furnish the Company with any representations and forms as shall reasonably be requested by the Company to assist it in determining the extent of, and in fulfilling, any withholding obligations it may have.

6.5 *Initial Capitalization; Initial Distribution.* The Managing Member shall take all action necessary to cause the Company to issue debt on terms acceptable to the Managing Member, such acceptance not to be unreasonably

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<sup>1</sup> The appropriate percentage is subject to ongoing analysis and discussion by and among the Applicants and their financial advisors.

withheld, and distribute a portion of the proceeds to the Members in accordance with Section 6.1 hereof such that the debt to equity ratio of the Company is initially up to 50%<sup>2</sup>. Such debt may be short term debt to be replaced with long term debt as soon as practicable after the closing of the acquisition of utility assets from the Utility Members.

## **ARTICLE 7**

### **Accounting and Reports**

#### **7.1     *Books and Records.***

(a)     The Company shall maintain or cause to be maintained at its principal office, this Agreement and all amendments thereto and full and accurate books of the Company showing all receipts and expenditures, assets and liabilities, profits and losses, and all other books, records and information required by the Act as necessary for recording the Company's business and affairs. The Company's books and records for financial reporting purposes shall be maintained in accordance with GAAP, consistently applied, except to the extent provided hereunder for purposes of maintaining Capital Accounts in accordance with Article 4 hereof and calculating the Profits or Losses allocated thereto in accordance with Article 5 hereof. Such documents, books and records shall be maintained until two (2) years after the termination and liquidation of the Company. The Company's financial statements shall also be kept in accordance with all applicable regulatory requirements, including the FERC's Uniform System of Accounts, and such financial statements shall be used in connection with setting the Company's rates, which are subject to regulation by the FERC.

(b)     Except as any such right may be limited by the Standards of Conduct or any applicable requirements of such orders or rules as the FERC may now or hereafter issue regarding access to facilities, books and records of RTOs, each Member shall have the right at reasonable times during usual business hours to examine, audit and make copies of the books of account and other financial and accounting books and records of the Company and other books and records relating to the reserves, assets, liabilities and expenses of the Company and expenditures by the Managing Member on behalf of the Company, including all information necessary to enable each Member to prepare all federal, state and local tax returns and reports and to support and defend such returns and reports; provided, however, that

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<sup>2</sup>     The appropriate percentage is subject to ongoing analysis and discussion by and among the Applicants and their financial advisors.

none of the foregoing activities shall be conducted in a manner that unreasonably interferes with the Company's operations or business or provides any Member (other than the Managing Member) with information that is proprietary or that gives such member a competitive advantage that is not permitted by Order No. 2000 or any other applicable requirements of such rules or orders as the FERC may now or hereafter issue regarding RTOs. Such right may be exercised through any agent or employee of a Member designated in writing by it or by an independent public accountant, engineer, attorney or other consultant so designated. The Member making the request shall bear all expenses incurred in any inspection, audit or examination made at such Member's behest. Should any inspection, audit or examination disclose any immaterial errors or immaterial improper charges, the Managing Member shall make, or cause to be made, appropriate adjustments therefor. In the event such errors or such improper charges are material and disadvantage one Member relative to the other Members, the Managing Member shall (i) reimburse the Company therefor and (ii) bear all reasonable expenses of such inspection, audit or examination.

## *7.2 Reports to Members.*

(a) As soon as available to the Company and in any event within thirty (30) days after the end of the first eleven (11) months of each Fiscal Year and within forty-five (45) days after the end of the last month of each Fiscal Year, the Managing Member shall cause to be prepared and sent to each Member for the prior month and for the period from the beginning of such Fiscal Year to the end of such fiscal month, a financial statement package which shall (i) be prepared in accordance with GAAP (except that certain footnotes may be omitted); and (ii) set forth in each case in comparative form versus both the figures for the previous Fiscal Year, and the forecast for the current Fiscal Year.

(b) As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year, the Managing Member shall provide to each Member audited financial statements of the Company for such Fiscal Year setting forth in each case in comparative form the figures for the previous Fiscal Year, certified by such certified public accountants as may be selected by the Managing Member.

(c) The Company or the Managing Member shall provide to each Member on a timely basis such information as a Member may reasonably request regarding the details of transactions recorded in the financial statements described in Subsections 7.2(a) and 7.2(b) hereof.

(d) As requested, the Company shall provide to each Member such information as may be necessary for them to comply with applicable financial reporting requirements of any competent governmental authorities or agencies or stock exchange on which the shares of any such company are listed including, without limitation, the New York Stock Exchange and the U.S. Securities and Exchange Commission and such information regarding the financial position, business, properties or affairs of the Company as a Member may reasonably request.

(e) The Company or the Managing Member shall promptly notify all Members of any bona fide proposals to acquire the Company or any significant portion thereof or any proposal involving a change of control of the Company.

### 7.3 Tax Matters.

(a) The Corporate Manager is hereby designated the "Tax Matters Partner" for federal income tax purposes pursuant to Section 6231 of the Code with respect to all taxable years of the Company and is authorized to do whatever is necessary to qualify as such. Each Member hereby agrees to join in the execution of such forms or documents or to take such other actions as may be necessary or appropriate to designate the Corporate Manager as the Tax Matters Partner. Any direct or indirect costs and expenses incurred by the Tax Matters Partner, acting in its capacity as such, shall, upon submission of an adequate accounting, be deemed costs and expenses of the Company, and the Company shall reimburse the Tax Matters Partner for such amounts. The Members hereby agree that the Company shall indemnify the Tax Matters Partner pursuant to Article 12 of this Agreement from and against any and all damages asserted against or incurred by the Tax Matters Partner in connection with any actions which the Tax Matters Partner reasonably believes to be within the scope of the authority conferred on it pursuant to this Agreement.

(b) The Tax Matters Partner shall prepare or cause to be prepared all tax returns required of the Company. As soon as practicable after the end of each taxable year (but in no event later than June 30 after the end of the taxable year, in the case of federal returns, or later than July 31 after the end of the taxable year, in the case of state, local or foreign returns), the Tax Matters Partner shall furnish to each Member such information in the possession of the Tax Matters Partner requested by such Member as necessary to timely fulfill such Member's federal, state, local and foreign tax obligations, including Schedule K-1, or any similar form as may be required by the Code or the Internal Revenue Service (the "IRS"). The Members shall

file their respective tax returns, as such pertain to the business of the Company, in a manner consistent with the Company's tax and information returns.

(c) The Tax Matters Partner shall use its best efforts to do all acts and take whatever steps are required to maximize, in the aggregate, the federal, state and local income tax advantages available to the Company and shall defend all tax audits and litigation with respect thereto.

(d) In the event that the Company shall be the subject of any audit, assessment of taxes, other examination by any tax authority, proceedings, or appeal of such a proceeding relating to taxes, whether administrative or judicial (a "Tax Contest"), to the extent the Company is treated as an entity for purposes of such Tax Contest, the Tax Matters Partner shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member thereof, except to the extent otherwise provided in Code section 6224(c).

(e) The Members hereby authorize the Tax Matters Partner to make (or cause to be made) any elections for tax purposes, including any election under Code section 754, as it determines, in its reasonable discretion, except to the extent inconsistent with Article 5 hereof with respect to the maintenance of Capital Accounts and allocations thereto; provided, however, that the Tax Matters Partner may not make (or cause to be made) any election or otherwise take any action or allow any action to be taken to cause the Company to be treated as an association taxable as a corporation without the approval of a Majority of the Members.

(f) Each Member hereby agrees to provide the Tax Matters Partner with reasonable access to such Member's books and records relating to any assets contributed by such Member to the Company, to the extent that information in such books and records is required by the Tax Matters Partner in order to prepare any tax or information returns of the Company or to defend any tax audits or litigation relating thereto.

7.4 Annual Operating Budget and Five Year Plan. No later than forty-five (45) days before the end of each Fiscal Year, the Managing Member shall prepare in good faith and submit to the Membership Committee (as defined in Article 8), for its information and comment (but not for its approval), an annual operating budget ("Annual Operating Budget") and five year plan, each of which shall, in the best judgment of the Managing Member, reflect reasonable expectations for the Company during the period covered. The Managing Member shall in its sole discretion approve the Annual Operating Budget and any amendments thereto.

**ARTICLE 8**  
**Actions by Members**

8.1 *Membership Committee.* The Company shall have a Membership Committee made up of all Members. Except as otherwise provided in this Agreement, on all matters requiring approval of the Members, each Member shall be entitled to vote ratably in proportion to its then current Percentage Interest in the Company.

8.2 *Meetings.* Meetings of the Membership Committee shall be held at the call of the Managing Member or by a Majority of the Members and only for the purpose of seeking the approval or consent of the Members as provided in the Approval Terms of this Agreement and for other purposes set forth in the notice of the meeting as may be required by law. The Members may take action by the vote of Members at a meeting in person or by proxy, or without a meeting by written consent. Any action required or permitted to be taken at any meeting of the Membership Committee may be taken without a meeting if Members holding Percentage Interests sufficient to approve the action pursuant to the terms of this Agreement consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Membership Committee. In no instance where action is authorized by written consent shall a meeting of the Membership Committee be called or notice be given; however, a copy of the action taken by written consent shall be sent promptly to all Members and filed with the minutes of the proceedings of the Membership Committee.

8.3 *Notice, Quorum and Vote Required.* Meetings of the Membership Committee may be called by the Managing Member or by a Majority of the Members upon at least five (5) days' prior written notice of the time and place of such meeting. For any meeting of the Membership Committee, the presence in person or by proxy of a Majority of the Members at the time of the action taken shall constitute a quorum for the transaction of business. Unless otherwise specifically provided herein, all matters requiring approval or consent of the Members shall be decided by an affirmative vote or written consent of a Majority of the Members.

8.4 *Power to Bind the Company.* Except as specifically provided pursuant to the Approval Terms of this Agreement or the Act, the Members, other than the Managing Member, shall not participate in the control or operation of the Company. No Member, other than the Managing Member, shall have the authority to

sign or deliver any instrument transferring or affecting the Company's interest in any real or personal property. No Member (acting in its capacity as such), other than the Managing Member, shall have any authority to bind the Company to any third party with respect to any matter.

8.5 Matters Requiring Member Approval.

(a) To the extent that the Members may waive their right to vote, approve or consent in respect of any matter requiring approval of the Members under the Act or other applicable law, the Members (other than the Managing Member, who shall hold Voting Interests) hereby waive any such right, until such Member is not a Market Participant and converts its Non-Voting Interest into Voting Interests in accordance with Section 3.1 hereof. In addition to any other matter requiring approval of the Members under any nonwaivable provisions of the Act or other applicable law, and any other vote of the Members provided under the Approval Terms of this Agreement, an affirmative vote of a Majority of the Members shall be required for any of the following matters:

(i) any proposal by the Company to (a) convert the Company into an entity other than a limited liability company, (b) enter into any transaction that would result in a change of control of the Company, (c) sell, transfer, lease, exchange or otherwise dispose of all, or substantially all, of the assets of the Company (other than pursuant to a mortgage or security interest entered into in connection with a financing of the Company's business), (d) merge or consolidate with or into any other entity or (e) take any action that would preclude a Member from using the equity method of accounting for its investment in the Company. A "change of control" as applied herein to the Company shall be deemed to have occurred if, following the consummation of any transaction, less than fifty percent (50%) of the outstanding Percentage Interests of the Company (or any successor entity resulting from such transaction) is held by those holders of the Percentage Interests of the Company immediately prior to the consummation of such transaction;

(ii) any acquisition or business development opportunity that is otherwise permissible under Sections 2.3 and 9.1(c) of this Agreement but is not directly or indirectly related to the provision of electric transmission service, including but not limited to the formation and administration of electric markets, or other services or functions that are commonly performed by independent transmission companies participating in an RTO;

(iii) any proposal to (a) institute proceedings to have the Company adjudicated bankrupt or insolvent, (b) consent to the institution of bankruptcy or insolvency proceedings against the Company, (c) file a petition seeking a reorganization of the Company under federal or state bankruptcy laws, (d) consent to the appointment of a receiver or trustee for the Company, or (e) make an assignment for the benefit of creditors of the Company; and

(iv) any proposal to amend the Approval Terms or the Economic Terms of this Agreement.

(b) In addition to any other matter requiring approval of the Members hereunder, holders of Voting Interests shall have the right to vote on matters for which the approval of the members of a limited liability company under the Act is required, provided, however, that the affirmative vote of Voting Interests representing at least a majority of all the then current Percentage Interests outstanding shall be required to approve any matter, unless a greater percent of the Percentage Interests is required for a particular matter under the terms of this Agreement.

## **ARTICLE 9**

### **Duties and Responsibilities of the Managing Member**

9.1 *General Management.* (a) Except as otherwise expressly provided pursuant to the Approval Terms of this Agreement, the Managing Member, in its capacity as a Member of the Company under the Act, shall have sole and complete charge and management of all the affairs and business of the Company, in all respects and in all matters. The Managing Member shall be an agent of the Company, and the actions of the Managing Member taken in such capacity and in accordance with this Agreement shall bind the Company. The Managing Member shall at all times be a Member of the Company. Except as otherwise expressly provided pursuant to the Approval Terms of this Agreement, the Members other than the Managing Member shall not participate in the control of the Company, and shall have no right, power or authority to act for or on behalf of, or otherwise bind the Company. Except as expressly provided pursuant to the Approval Terms of this Agreement or required by any non-waivable provisions of applicable law, Members other than the Managing Member shall have no right to vote on or consent to any other matter, act, decision or document involving the Company or its business.

(b) At all times the Managing Member shall be a fiduciary of the Company and shall act in good faith and in a manner that the Managing

Member reasonably believes to be in the best interests of the Company. In managing the business and affairs of the Company, the Managing Member shall perform its duties in a manner consistent with its duties to the Members under this Agreement. In performing such duties, the Managing Member shall consider the interests of the Members solely in their capacity as investors in the Company and shall have no duty to consider, and shall not consider, any other interests that the Members may have in any other business, asset or liability, including any Members' interests as participants in the electric markets served by the Company.

(c) At all times the Managing Member shall operate, maintain, plan and expand the Company's transmission system to meet the needs of all users of such transmission system in a non-discriminatory manner, consistent with all applicable requirements of Order No. 2000 and such other orders or rules as the FERC may now or hereafter issue affecting independent transmission companies.

9.2 *Exclusive Control.* Except as otherwise expressly provided pursuant to the Approval Terms of this Agreement, the Managing Member shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as it reasonably deems necessary or appropriate to accomplish the purposes and direct the affairs of the Company. The Managing Member shall have the right to manage and make decisions in a manner that the Managing Member reasonably believes will foster the long term growth and prospects of the business, and the Managing Member shall have no duties or liabilities to another Member or other Person for actions and decisions that the Managing Member reasonably believes are necessary, appropriate or consistent with such long term growth and prospects. The Managing Member shall have the sole power and authority to bind the Company, except and to the extent that such power is expressly delegated in writing to any other Person by the Managing Member.

9.3 *Certain Powers.* Except as otherwise expressly provided pursuant to the Approval Terms of this Agreement, the Managing Member shall have the exclusive right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts at the expense of the Company, deemed by the Managing Member to be necessary or appropriate to effectuate the business of the Company. Except as expressly provided pursuant to the Approval Terms of this Agreement and, without limiting the generality of the foregoing, the Managing Member shall have full and complete power and authority, without the approval of any other Member:

(a) to conduct any business that is not inconsistent with the Company's purpose as set forth in Section 2.3 hereof or the provisions of Section 9.1(c) hereof, and to exercise any rights and powers, permitted of a limited liability company organized under the laws of the State of Delaware, in any state, territory, district or foreign country as the Managing Member deems necessary or advisable;

(b) to acquire by purchase, lease or otherwise, and/or to otherwise own, hold, operate, finance, maintain, improve, lease, sell, convey, mortgage, transfer or dispose of any property or other assets that the Managing Member deems necessary or advisable;

(c) to negotiate, enter into, perform, modify, extend, terminate, amend, waive, renegotiate and/or carry out any contract and agreements of any kind and nature, including without limitation, contracts and agreements with any Member or any agent of the Company, as the Managing Member deems necessary or advisable, but only in such a manner that is consistent with the provisions of this Agreement and the Standards of Conduct;

(d) to lend money and to invest and reinvest its funds;

(e) to sue and be sued, complain and defend, and participate in administrative, judicial and other proceedings, in the name of, and on behalf of, the Company;

(f) to pay, collect, compromise, arbitrate or otherwise adjust or settle any and all claims or demands of or against the Company, in such amounts and upon such terms and conditions as the Managing Member shall reasonably determine;

(g) to, from time to time, employ, engage, hire or otherwise secure the services of such Persons, including any Member, as the Managing Member may deem necessary or advisable for the proper execution of its duties as Managing Member hereunder, provided such services are within the scope of the foregoing authority granted to the Managing Member hereunder, with such employment to be for such reasonable compensation and upon such reasonable terms and conditions as the Managing Member shall determine, but only in such a manner that is consistent with the provisions of this Agreement and the Standards of Conduct;

(h) to, from time to time, appoint such Executive Officers as the Managing Member deems necessary or advisable, define and modify, from time to

time, such Executive Officers' duties, and fix and adjust, as appropriate, such Executive Officers' compensation;

(i) to borrow money and issue evidences of indebtedness necessary, convenient or incidental to the business of the Company, and secure the same by mortgage, pledge or other lien on any tangible assets of the Company;

(j) to prepare, execute, file record, publish and deliver any and all instruments, documents or statements necessary or convenient to effectuate any and all actions that the Managing Member is authorized to take on behalf of the Company;

(k) to deal with, or otherwise engage in business with, or provide services to and receive compensation therefor from, any Person who has provided services to, lent money to, sold property to, or purchased property from the Company or a Member, or any Person who may do so in the future, but only in such a manner that is consistent with the provisions of this Agreement, and the Standards of Conduct; and

(l) to establish all accounting and tax policies that the Company will use to maintain its books and records.

9.4 Restrictions on Other Members. Except as expressly provided in the Approval Terms of this Agreement or required by any non-waivable provision of the Act or other applicable law, no Member other than the Managing Member shall (a) have the right to vote on or consent to any other matter, act, decision or document involving the Company or its business, (b) have the authority to sign or deliver any instrument transferring or affecting the Company's interest in any real property, or (c) take part in the day-to-day management, or the operation or control, of the business and affairs of the Company. Except to the extent expressly delegated by the Managing Member, no other Member or Person other than the Managing Member shall be an agent for the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

9.5 Personnel. The Managing Member may, in its sole discretion, employ for the Company such personnel as it deems appropriate, but only in such a manner that is consistent with the provisions of this Agreement and the Standards of Conduct.

9.6 Restrictions on Managing Member. Notwithstanding any contrary provision of this Agreement, without the approval or written consent of all of the Members, the Managing Member shall not have the authority to:

- (a) Do any act in contravention of this Agreement or contrary to the best interests of the Company;
- (b) Knowingly perform any act that would subject any Member to liability for the debts, liabilities or obligations of the Company;
- (c) Require any Member to make Additional Capital Contributions to the Company;
- (d) Receive any compensation for performing its duties as the Managing Member;
- (e) Except for such adjustments or revaluations as are contemplated in the definition of Book Tax Value set forth in Article 1 hereof, revalue, or cause to be revalued, any assets of the Company; or
- (f) Do any acts, perform any actions or effect any matters requiring approval of the Members under the provisions of this Agreement or the Act or other applicable law, without first obtaining the approval of the Members required by such provisions.

## **ARTICLE 10**

### **Transfer of Interests in the Company; Withdrawal of Members**

10.1 Prohibited Transfers. Except as provided in Section 10.2 of this Agreement, no Member may Transfer or encumber its Interest in the Company or any part thereof in any way whatsoever, and any such Transfer or encumbrance in violation of this Article 10 shall be null and void as against the Company, except as otherwise permitted herein or provided by law, and the Transferring or withdrawing Members shall be liable to the Company and the other Members for all damages that they may sustain as a result of such attempted Transfer.

10.2 Permitted Transfers by Members. No Member may Transfer all or a portion of its Interest in the Company unless:

(a) the Member desiring to consummate such Transfer (the "Assigning Member"), and the prospective Transferee each execute, acknowledge and deliver to all the other Members such instruments of transfer and assignment with respect to such Transfer and such other instruments as are reasonably satisfactory in form and substance to a Majority of the Members, except that the provisions of this Section 10.2 (a) shall not apply to any Transfer that is made immediately prior to, and in connection with, the conversions of that portion of such Interest that is to be Transferred into shares of Class B Common Stock or Class C Common Stock of the Corporate Manager pursuant to the terms of this Agreement and the Member and Stockholder Agreement and the immediate conversion thereafter of such shares of Class B Common Stock or Class C Common Stock into shares of Class A Common Stock pursuant to the provisions of the Certificate of Incorporation of the Corporate Manager for purposes of offering and selling such shares of Class A Common Stock to the public or to private investors;

(b) the Transfer will not violate any securities laws or any other applicable federal or state laws or the order of any court having jurisdiction over the Company or any of its assets;

(c) the Transfer will not result in or create a "prohibited transaction" as defined in Code section 4975(c) or result in or cause the Company or any Member to be liable for excise tax under Chapter 42 of the Code or result in or cause the Company or the Company's assets to become the assets of an employee benefit plan (as defined in Section 3(3) of ERISA);

(d) the Transfer will not cause any violation of or an event of default under, or result in acceleration of any indebtedness under, any note, mortgage, loan, or similar instrument or document to which the Company is a party; and

(e) the Transfer will not cause the Company to be classified as corporation (or an association taxable as a corporation) within the meaning of the Code section 7701 or as a publicly traded partnership within the meaning of Code section 7704.

10.3. *Transfer Procedures.* (a) Any Member that intends to transfer part or all of its Interest (other than pursuant to a conversion thereof pursuant to section 3.4 of this Agreement) shall notify the Corporate Manager in writing of its intention to transfer, the Percentage Interest proposed to be transferred, and the date on which such transfer is proposed to occur, which date shall be at least 45 days after the date of such notice (the "Transfer Date"). The Corporate Manager shall promptly

provide a copy of such written notice to the other Members. Any other Member that contemplates transferring part or all of its Interest within the twelve month period beginning on the date after the Transfer Date (other than pursuant to a conversion thereof pursuant to section 3.4 of this Agreement) shall notify the Corporate Manager, within 15 days of its receipt of the notification set forth in the preceding sentence, as to the Percentage Interest that such Member contemplates transferring within such twelve month period.

(b) Upon receipt of the notices described in paragraph (a), the Corporate Manager shall approve any proposed transfers (that otherwise meet the requirements of section 10.2 of this Agreement) in accordance with the following provisions: (i) if the aggregate Percentage Interests proposed to be transferred by all Members does not exceed fifty percent of the aggregate Percentage Interests of all Members in the Company, then all such Members shall be entitled to transfer the Percentage Interests proposed to be transferred; (ii) if the aggregate Percentage Interests proposed to be transferred by all Members equals or exceeds fifty percent of the aggregate Percentage Interests of all Members in the Company, then each such Member shall be entitled to transfer that portion of its Percentage Interest proposed to be transferred by it less the product of (A) the amount by which the aggregate Percentage Interests proposed to be transferred by all Members exceeds forty-nine percent of the aggregate Percentage Interests of all Members in the Company and (B) a fraction, the numerator of which is the Percentage Interests proposed to be transferred by such Member and the denominator of which is the aggregate Percentage Interests proposed to be transferred by all Members; and (iii) if any Member that provides a notice described in paragraph (a) does not transfer at least one-half of the Percentage Interest specified in such notice as being subject to transfer within the twelve month period referred to in paragraph (a), such Member will not be permitted to transfer any of its Interest in the Company during the immediately succeeding twelve month period unless such Member delivers to the Company a written opinion of nationally recognized tax counsel, in form and substance satisfactory to the Company, substantially to the effect that the transfer (together with any proposed transfers by any other Member during such twelve month period) will not cause a material adverse tax consequence to the Company or any of the Members, including, but not limited to, any material adverse tax consequence resulting, directly or indirectly, from the termination of the Company under Code section 708(b)(1)(B).

10.4 Substitute Member. A Transferee of the whole or any part of an Interest in the Company who satisfies the conditions set forth in Section 10.2 hereof shall have the right to become a Member in place of the Assigning Member (a "Substitute Member") only if all of the following conditions are satisfied:

(a) the fully executed and acknowledged written instrument of assignment that has been filed with the Company sets forth a statement of the intention of the Assigning Member that the Transferee become a Substitute Member in its place;

(b) the Transferee executes, adopts and acknowledges this Agreement, and those certain other agreements set forth in Schedule C attached hereto, and agrees to assume all the obligations of the Assigning Member hereunder and thereunder; and

(c) any costs of the Transfer incurred by the Company shall have been reimbursed to the Company by the Assigning Member or the Transferee.

10.5 *Involuntary Withdrawal by a Member.* Upon the occurrence of an event referenced in Section 18-304 of the Act, or any successor provision thereto, the Member with respect to whom such event occurred shall forthwith cease to be a Member and shall have no rights or powers as a Member and the continuation of the Company shall be governed by Section 11.2 of this Agreement.

10.6 *Voluntary Withdrawal by a Member.* No Member may resign or withdraw from the Company without the prior written consent of all of the Members, which consent may not be unreasonably withheld or delayed.

10.7 *Effect of Transfer.* No Transfer shall relieve any Member from its obligations incurred hereunder prior to such Transfer.

## **ARTICLE 11**

### **Dissolution and Liquidation**

11.1 *Dissolution.* Subject to Section 11.2, the Company shall be dissolved upon the first of the following events to occur (each a "Dissolution Event"):

(a) The withdrawal, resignation, dissolution or liquidation of a Member, or the occurrence of an event resulting in the Member ceasing to be such under the Act, it being understood that the conversion of a Member's Interest shall not be deemed a Dissolution Event;

(b) One hundred eighty (180) days after the filing of a bankruptcy petition, provided that such petition has not been dismissed in the interim;

- (c) The sale, transfer or other disposition of all or substantially all the assets of the Company, including condemnation by eminent domain;
- (d) An agreement in writing by all of the Members to dissolve the Company;
- (e) An entry of a decree of judicial dissolution of the Company; or
- (f) The occurrence of any other event specified under the Act as one requiring such dissolution.

11.2 Election to Continue the Business. The Company shall not be dissolved pursuant to a Dissolution Event specified in Subsections 11.1(a) or (f) (except as otherwise provided in the Act), if, within 45 days of such Dissolution Event, a Majority of the Members remaining agree in writing to continue the business of the Company, and in the event there is only one remaining Member, such Member shall have the right to admit a new Member in accordance with the terms of this Agreement.

11.3 Closing of Affairs. In the event of the dissolution of the Company for any reason, and in the absence of an election to continue the business of the Company, an independent liquidator (the "Liquidator") selected by a Majority of the Members remaining shall commence to close the affairs of the Company, to liquidate its investments and to terminate the Company. The Liquidator shall act as a fiduciary to the Company and shall have full right and unlimited discretion to manage the business of the Company during the period of closing the affairs of the Company and to determine the time, manner and terms of any sale or sales of Company property pursuant to such liquidation. Upon complete liquidation of the Company's property and compliance with the distribution provisions set forth in Section 11.4 hereof, the Company shall cease to be such and the Liquidator shall execute, acknowledge and cause to be filed all certificates necessary to terminate the Company.

11.4 Distributions Upon Dissolution.

- (a) The Liquidator shall, as soon as practicable, close the affairs of the Company, adjust the Book Tax Values of all Company assets in accordance with the definition of Book Tax Value and sell or distribute the assets of

the Company. The assets of the Company shall be applied, to the extent permitted by the Act, in the following order of priority:

(i) First, to pay the costs and expenses of the closing of the affairs and liquidation of the Company;

(ii) Second, to pay the debts and liabilities of the Company;

(iii) Third, to establish reserves adequate to meet any and all contingent or unforeseen liabilities or obligations of the Company, provided that at the expiration of such period of time as the Liquidator may reasonably deem advisable, the balance of such reserves remaining after the payment of such contingencies or liabilities shall be distributed as hereinafter provided; and

(iv) Finally, to all Members in accordance with their positive Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods.

(b) If upon termination and liquidation of the Company, the Liquidator determines that (i) an immediate sale of part or all of the assets of the Company would cause undue loss to the Members, and (ii) the assets of the Company would be readily susceptible to division for distribution in kind to the Members, then to that extent the Liquidator may distribute such assets to the Members in kind. For such purposes, the assets of the Company shall be valued at fair market value at the time of distribution to be determined by an independent appraiser selected in good faith by the Liquidator.

11.5 Orderly Liquidation. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities so as to minimize the losses normally attendant upon a liquidation.

11.6 Deficit Upon Liquidation. Except to the extent otherwise provided in this Agreement or by law with respect to third-party creditors of the Company, upon liquidation, none of the Members shall be liable to the Company for any deficit in its Capital Account, nor shall such deficits be deemed assets of the Company.

## **ARTICLE 12**

### **Indemnification**

12.1 *Indemnity.* The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Person is or was a Member, an employee or an agent of the Company, against expenses, including attorneys' fees, judgment, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with the action, suit or proceeding if such Person acted in good faith and in a manner which such Person reasonably believed to be in or not opposed to the best interests of this Company, and, with respect to a criminal action or proceeding, had no reasonable cause to believe its conduct was unlawful; provided that such indemnity shall not be mandatory for any Person seeking indemnity in connection with a proceeding voluntarily initiated by such Person unless such proceeding was authorized by the Managing Member. No Member shall be indemnified with respect to actions between Members or their Affiliates.

12.2 *Advance Payment of Expenses.* The expenses of Members incurred in defending a civil or criminal action, suit or proceeding may be paid by the Company as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the Member to repay the amount if it is ultimately determined by a court of competent jurisdiction that such Member is not entitled to be indemnified by the Company. The provisions of this subsection do not affect any rights to advancement of expenses to which personnel other than Members may be entitled under any contract or otherwise by law.

12.3 *Other Arrangements Not Excluded.* The indemnification and advancement of expenses authorized in or ordered by a court pursuant to this Article 12:

(a) Does not exclude any other rights to which a Person seeking indemnification or advancement of expenses may be entitled under the Act or any agreement, vote of Members or otherwise, for either an action in any such Person's official capacity or an action in another capacity while holding such Person's office, except that indemnification, unless ordered by a court, shall not be made to or on behalf of any Member if a final adjudication established that such Member's acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and were material to the cause of action; and

(b) Continues for a Person who has ceased to be a Member, employee or agent and inures to the benefit of the heirs, executors and administrators of such a Person.

### **ARTICLE 13**

#### **Amendment to Agreement**

13.1 Amendments to this Agreement may be made by the Managing Member, provided, however, that any amendment affecting the Approval Terms or the Economic Terms of this Agreement shall be approved in writing by a Majority of the Members. An amendment shall become effective as of the date specified in the Members' approval or, if none is required or specified, as of the date of such approval or as otherwise provided in the Act.

### **ARTICLE 14**

#### **General Provisions**

14.1 Other Activities. A Member may engage or invest in, and devote its time to, any other business venture or activities of any nature and description (independently or with others) and shall have no duties or liabilities under this Agreement to any other Member or other Person for engaging in such activities or pursuing such opportunities.

14.2 Nondisclosure; Publicity. The Members shall not, at any time directly or through others, use, disclose, publish or otherwise disseminate any and all confidential information of the Company or that of the Members discovered, developed or known by the Members as a consequence of their respective ownership of, employment by or relationship with the Company, including information entrusted to the Company by others, and any proprietary rights, inventions or tangible unpatented proprietary rights of the Company, except that a Member may disclose information to an Affiliate provided that such Affiliate agrees to be bound by the provisions of this Section 14.2, and except as required for any Member's financing, banking or other credit relationships or for any Member's compliance with the securities laws or other applicable laws.

14.3 Notices. Unless otherwise specifically provided in this Agreement, all notices and other communications required or permitted to be given hereunder shall be in writing and shall be (i) delivered by hand, (ii) delivered by a

nationally recognized commercial overnight delivery service, (iii) mailed postage prepaid by certified mail in any such case directed or addressed to the respective addresses set forth in Schedule A attached hereto (iv) transmitted by facsimile to the facsimile number set forth in Schedule A attached hereto, with receipt confirmed. Such notices shall be effective: (a) in the case of hand deliveries, when received; (b) in the case of an overnight delivery service, on the next business day after being placed in the possession of such delivery service, with delivery charges prepaid; (c) in the case of certified mail, upon receipt of the written signature card indicating acceptance by addressee; and (d) in the case of facsimile notices, the Business Day following the date on which electronic indication of receipt is received. Any Member may change its address and facsimile number by written notice to the other parties given in accordance with this Section 14.3, following the effectiveness of which notice Schedule A attached hereto shall be updated accordingly.

14.4 Entire Agreement, etc. This Agreement and those agreements listed on Schedule C attached hereto shall constitute the entire agreement between the parties hereto relating to the operations of the Company and shall supersede all prior contracts, agreements and understandings between them relating to such operations.

14.5 Construction Principles. As used in this Agreement, words in any gender shall be deemed to include all other genders. The singular shall be deemed to include the plural and vice versa. The captions and article and section headings in this Agreement are inserted for convenience of reference only and are not intended to have significance for the interpretation of or construction of the provisions of this Agreement.

14.6 Counterparts. This Agreement may be executed in two or more counterparts by the parties hereto, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

14.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the parties' expectations regarding this Agreement. Otherwise, the parties hereto agree to replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

14.8 *Binding Effect.* Subject to the provisions of this Agreement relating to transferability, this Agreement shall be binding upon, and inure to the benefit of, the Members and their respective successors and permitted assigns.

14.9 *Additional Documents and Acts.* Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and of the transactions contemplated hereby.

14.10 *No Third Party Beneficiary.* This Agreement is made solely for the benefit of the parties hereto and their successors and permitted assigns and no other Person shall have any rights, interest, or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

14.11 *Waiver of Partition.* Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain any action for partition of any of the Company's property.

14.12 *Arbitration, Governing Law.* Any dispute or controversy as may arise out of or relating to this Agreement, including any question regarding its existence, validity or construction shall be resolved in accordance with the Alternative Dispute Resolution Process set forth in Schedule D hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law.

14.13 *Limitation on Ownership of Managing Member's Shares.* The Members hereby acknowledge that the By-laws of the Managing Member provide that (i) no Market Participant may own, directly or indirectly, or have the ability, by contract or otherwise, to direct the exercise of voting rights of (collectively "Own") more than 5% of the outstanding Class A Common Stock of Managing Member during the five year period following the date of the commencement of the Managing Member's operations, (ii) no Class of Market Participants may own more than an aggregate of 15% of the outstanding Class A Common Stock of the Managing Member during such five year period, (iii) no Market Participant (including any Member) may Own any Class A Common Stock of the Managing Member after the date that is five years after the date of the commencement of the Managing Member's operations, without prior FERC approval and (iv) no Market Participant may Own any

Class C Common Stock of the Managing Member. The Members hereby agree that they will not take or suffer to be taken any action that would result in a violation of the foregoing prohibition and that, if, at any time, a Member Owns in excess of 5% of the outstanding Class A Common Stock of the Managing Member or any Member which is a Market Participant Owns any Class C Common Stock of the Managing Member, such Member shall immediately (i) notify the Company thereof and (ii) divest itself of an amount of such capital stock equal to such excess.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Agreement as of the date first written above.

CORPORATE MANAGER

By: \_\_\_\_\_  
Name:  
Title:

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**

<b>Member's Name</b>	<b>Address and Facsimile</b>	<b>Percentage Interest</b>
Transconnect Corporate Manager, Inc.	[To Come]	[To Come]
[_____]	[To Come]	[To Come]
[Other]	[To Come]	[To Come]

**SCHEDULE B**

<b>Member's Name</b>	<b>Assets Contributed as Initial Capital Contribution &amp; Their Agreed Value</b>
[_____]	[To Come]
[_____]	[To Come]
[Other]	[To Come]

## **SCHEDULE C**

### **OTHER AGREEMENTS**

[Management Agreement Between Transconnect LLC and Transconnect Corporate Manager, Inc. ]

[Member and Stockholder Agreement]

[Insert other relevant agreements between the Members]

## **SCHEDULE D**

### **ALTERNATIVE DISPUTE RESOLUTION PROCESS**

1. Definitions. Capitalized term used but not defined in this Schedule shall have the meaning ascribed to such terms in the Limited Liability Company Operating Agreement for Transconnect LLC (the “Agreement”).

2. Dispute Resolution.

2.1 Preconditions to Arbitration.

2.1.1 Informal Settlement. The parties shall make all reasonable efforts to settle all disputes governed by this Schedule. In the event any such dispute is not settled, either party may request in writing that the Managing Member appoint an impartial facilitator to aid the parties in reaching a mutually acceptable resolution to the dispute; such appointment shall be made within 10 days of receipt of the request. The facilitator and representatives of the parties with authority to settle the dispute shall meet within 21 days after the facilitator has been appointed to attempt to negotiate a resolution of the dispute. Settlement offers shall not be admissible in any subsequent dispute resolution process. With the consent of all parties, resolution may include referring the matter to a technical body for resolution or for an advisory opinion.

2.1.2 Impasse. If the parties have not succeeded in negotiating a resolution of the dispute within 30 days after first meeting with the facilitator or if the facilitator is not appointed within 10 days pursuant to Section 2.1.1 of this Schedule, unless otherwise agreed, the parties shall be deemed to be at an impasse and any such disputing party may commence the arbitration process provided hereunder by notice to the other party.

2.1.3 Statements of Dispute. Within 14 days of a party’s request that the arbitration process be commenced, each party shall submit a statement in writing to the other party, which statement shall set forth in reasonable detail the nature of the dispute, the issues to be arbitrated, and the proposed arbitrator’s award sought through such arbitration proceedings. To the extent parties do not agree on the terms of a required contract provision, each submittal shall include proposed contract language for those issues in dispute.

2.1.4 Selection of an Arbitrator. Within 10 days following the submission of their statements, the parties shall select an arbitrator familiar with and knowledgeable about the policies and criteria used in the Company’s or the parties business, transmission

systems and regulatory requirements. If the parties cannot agree upon an arbitrator, the parties shall take turns striking names from a list of 10 qualified individuals supplied by the Arbitration Committee of the Western Regional Transmission Association, or any successor organization (the “WRTA”) from the list maintained by the WRTA Board, with a party chosen by lot first striking a name. The last-remaining name not stricken shall be designated as the arbitrator. If that individual is unable or unwilling to serve, the individual last stricken from the list shall be designated and the process repeated until an individual is selected who is able and willing to serve. Absent the express written consent of all parties as to any particular individual, no person shall be eligible for selection as an arbitrator who is a past or present officer, member of the governing body, employee of or consultant to any of the parties, or of an entity related to or affiliated with any of the parties, or whose interests are otherwise affected by the matter to be arbitrated. Any individual designated as an arbitrator shall make known to the parties any such disqualifying relationship and a new arbitrator shall be designated in accordance with the provisions of this Section 2.1.4.

2.1.5 Procedural Rules. The arbitrator shall determine discovery procedures, intervention rights, how evidence shall be taken, what written submittals may be made, and other such procedural matters, taking into account the complexity of the issues involved, the extent to which factual matters are disputed and the extent to which the credibility of witnesses is relevant to a resolution of the dispute. Intervenors shall have the same procedural rights as parties to the dispute. Each party to the dispute shall produce all evidence determined by the arbitrator to be relevant to the issues presented. To the extent such evidence involves commercially sensitive or confidential information, the arbitrator shall issue an appropriate protective order which shall be complied with by all parties to the dispute. The arbitrator may elect to resolve the arbitration matter solely on the basis of written evidence and arguments.

2.1.6 Intervention. The arbitrator shall admit as intervenors in the dispute resolution process any Person that requests intervention and demonstrates to the arbitrator good cause for intervention. Absent the agreement to the contrary of all parties, no Person shall be permitted to intervene unless, as a condition of its intervention, it agrees to be bound by the provisions of this Schedule in regard to the arbitration, including the provisions related to deference on appeal to the FERC set forth in Section 2.5 of this Schedule.

2.1.7 Evidence. The arbitrator shall take evidence submitted by the disputing parties in accordance with procedures established by the arbitrator and may request additional information, including the opinion of recognized technical bodies. All disputing parties shall be afforded a reasonable opportunity to rebut any such additional information. Other affected entities may request in writing that the arbitrator consider

additional information and the arbitrator may consider such additional information, subject to a right of the parties to have a reasonable opportunity to rebut such additional information.

2.2 Substantive Standards and Decision. As soon as practicable but in no event later than 115 days of his or her selection as arbitrator, the arbitrator shall select, by written notice to the parties, the proposed award of a party, or intervenor which best meets the terms and intent of this Agreement, of any provisions of the RTO Tariffs not inconsistent with this Agreement, other applicable agreements, laws, or regulations, or applicable technical standards and criteria not inconsistent with this Agreement and any other policies or determinations by the arbitrator not inconsistent with this Agreement; provided, however, if the arbitrator concludes that no proposed award is consistent with the applicable considerations or that no proposed award addresses all issues in dispute, the arbitrator shall specify how each proposed award is deficient and request that the disputing parties submit new proposed awards that cure the deficiency perceived by the arbitrator. A written decision, including specific findings of fact, explaining the basis for the award shall be provided by the arbitrator with the written notice to the parties. Awards shall be based only on the evidence on the record before the arbitrator. No award that is not appealed shall be deemed to be precedential in any other arbitration related to a different dispute.

## 2.3 Compliance and Costs.

2.3.1 Compliance With the Arbitrator's Award. Immediately upon the decision by the arbitrator, except during the period of appeal as provided for in Section 2.4 of this Schedule, the parties shall commence to take, and thereafter diligently prosecute to completion, whatever action is required to comply with the selected award to the extent the selected award does not require regulatory action. To the extent the award requires local, state, federal, provincial or tribal approval or regulatory action, FERC review of an award involving a federal power marketing agency, or a FERC filing by a transmission provider subject to Sections 205 or 206 of the Federal Power Act (the "FPA"), the affected party or intervenor shall promptly submit and support that portion of the award with the appropriate authority except as provided in Section 2.4 or Section 2.5 of this Schedule. Any and all costs associated with the arbitration (but not including the parties' costs associated with attorney and witness fees) shall be borne by the party or parties whose proposed award was not selected, unless the parties agree to an alternate method of allocating costs, or unless the arbitrator determines it would be appropriate to allocate all or a portion of such costs to one or more intervenors.

## 2.4 FERC Appeal.

2.4.1 Grounds for Appeal. Within 30 days of the issuance of any arbitration award, any party to an arbitration may apply to the FERC to hear an appeal of such award with respect to matters to which the FERC has jurisdiction, but only upon the grounds that the award is contrary to or beyond the scope of this Agreement or is unjust, unreasonable, unduly discriminatory or preferential or otherwise inconsistent with the FPA or the FERC's then applicable standards or policies. Any appeal to the FERC shall be based solely upon the record assembled by the arbitrator; provided, however, that any order by an arbitrator excluding material from the arbitration record or any ruling which is alleged to violate due process may be explicitly appealed to the FERC by a party as a part of an appeal under this Section 2.4. Parties to arbitrations intend that: (i) the FERC should afford substantial deference to the factual findings of the arbitrator; (ii) the portion, if any, of the award relating to issues not of first impression (i.e., matters previously decided by the FERC or a court of competent jurisdiction in cases involving comparable facts and circumstances) should be afforded appropriate deference by the FERC; and (iii) the portion, if any, of the award relating to issues of first impression should be afforded no deference by the FERC. Implementation of the award shall be stayed pending an appeal to the FERC unless and until, at the request of a disputing party, the FERC issues an order shortening or extending the stay.

2.4.2 No Expansion of Factual Record. No party to an arbitration shall seek to expand the factual record before the FERC beyond that offered to the arbitrator, except that any party to an arbitration may submit such additional evidence or argument as may be needed to respond to new evidence or arguments raised by intervenors before the FERC who were not parties to the arbitration.

2.5 Judicial Review. Subject to the right of any party to appeal to and exhaustion of remedies at the FERC, as provided in Section 2.4 of this Schedule, any party shall be entitled to seek enforcement of the award in any court of competent jurisdiction. Except for appeals of any decision by the FERC, judicial challenges to an award under this Schedule shall be limited to the grounds specified in the Federal Arbitration Act, Title 9.